IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.5148 OF 2004

G.T.Pillai ...Petitioner

vs.

Union of India & others. ...Respondents.

Mr.S.V.Marne, for Petitioner.

Mr.Y.S.Bhate with Suresh Kumar, for Respondents.

CORAM: A.P.SHAH & S.U.KAMDAR, JJ.

DATED: 14th September,2004

ORAL JUDGEMENT (PER S.U.KAMDAR,J.)

1. By the present petition, the Petitioner is impugning the order passed by Central Administrative Tribunal dated 14th August,2001 and further seeks direction by writ of mandamus that the Petitioner's pay scale should be fixed in the revised scale of Rs.1740-3000/- retrospectively from 1st January,1986 and further all consequential benefits should be granted to the Petitioner.

2. Some of the material facts which are relevant are as under:-

On 2nd February,1965, the Petitioner was appointed as Draftsman (Technical) in National Defence Academy. On 4th February, 1967, he was selected to the post of Demonstrator and was placed on the pay scale of Rs.205-280/-. On 1st January,1986 on the recommendation of Fourth Pay Commission, the pay scale of Demonstrator was revised to Rs.1320-2040/-. In the same year of 1986 the Government introduced the scheme known as "Revision of pay Scales of Teachers in Universities and Colleges,1986" In accordance with the said Scheme, the demonstrators were granted revised pay scale of Rs.1740-3000/-. This pay scale was brought into effect from 1st January,1986. But on 2nd April,1993, the said package scheme for revision of pay scale was also made applicable and extended to the teaching staff of National Defence Academy and it is the case of the Petitioner that thus the Petitioner become eligible for revised pay scale of Rs.1740-3000/- with effect from 1st January,1986.

3. Sometime in or about the year 1989, the demonstrators of Army Cadet College, Dehradun approached Central Administrative Tribunal, Allahabad Bench, by filing Original Application no.527 of 1989 and sought thereunder the relief for grant of pay scale of Rs.1740-3000/-.

4. On 1st July,1995, the Petitioner was promoted to the post of Foreman-Inspector (Work-shop) and his pay scale was once again revised on his promotion to Rs.1400-2300/-. On 16th February, 1996, Allahabad Bench of Central Administrative Tribunal, allowed the Original application being no.527 of 1989 and ultimately the Appeal filed against the said order to the Hon'ble Supreme Court was also dismissed. The Petitioner herein also filed an application before Central Administrative Tribunal, Mumbai, being O.A. no.816 of 1998 praying for identical reliefs as granted to various other demonstrators in National Defence Academy. On 25th June,2001, it is the case of the Petitioner, that O.A. filed by other 21 demonstrators was allowed and they were granted pay scale of Rs.1740- 3000/-. However, in so far as the Petitioner's case

is concerned, the same has been rejected by Central Administrative Tribunal, Mumbai, by impugned order dated 14th August,2001. The Petitioner contends that thereafter he made numerous representations seeking similar reliefs as granted to other demonstrators. However, the Petitioner's request was rejected on 25.3.2003, on the ground that Ministry of Defence and Ministry of Finance have rejected his representations. It is thereafter that Petitioner has filed the present Petition challenging the order of Central Administrative Tribunal dated 14th August,2001 and also challenging the letter dated 25th March,2003.

5. We have heard the parties. The petition ex-facie suffers from latches and delay. The Central Administrative Tribunal has passed the order on 14th August,2001 and it is now challenged after the period of about three years by filing present petition. Normally we would have simply dismiss, the Petition on the ground of delay and latches, but in view of the fact that the Petitioner's case being that other similarly placed employees have been given very same benefits of higher pay scale of Rs.1740-3000/- and

same has been wrongly denied to the Petitioner herein, we have heard the matter even on merits.

6. On going through the record, we find that Fourth Pay Commission while revising the pay scale has inter-alia provided that for the post of demonstrator a person must possess qualification of Graduation in Science faculty. The circular of the Ministry of Human Resources which is issued as a policy decision pertaining to revision of pay scale provided that it is applicable in accordance with the recommendation of 5th Pay Commission. The recommendation which has been made for the parity in the pay scale of demonstrator inter-alia provides as under:-

> "The basic qualification for recruitment to the post of Demonstrator in ACC wing are similar to Demonstrators working in the undergraduate colleges affiliated to various Universities. A candidate for the post should have a B.Sc. degree or diploma in Engineering with two years experience of the job. The

qualification for Demonstrator in an Under Graduate College, however, is only B.Sc. without any experience of the job. The charter of duties of a demonstrator in ACC Wing are at Appdx 'AI attached.

. The qualifications therefore are comparatively higher and the nature of work more demanding. The Demonstrator working in a Civil College is given the Pay Scale of Rs.1740-3000/- whereas the pay scale of a Demonstrator in ACC wing stagnates after 20 years of his service. this invariably affects his moral results in frustration. To overcome this, it is essential that the proposed Pay Scale may be accepted."

Thus, it is seen that for the purpose of getting benefit of higher pay scale of Rs.1740-3000/-, the demonstrator is required to be qualified as B.Sc. graduate. In the present case, the Petitioner is admittedly only S.S.C. and passed I.T.I. (Drafts-man) examination. The higher scale is available

only for those employees who are qualified for such higher scale as B.Sc.Graduates.

7. The Tribunal in the impugned order dated 14th August,2001 has considered this aspect in detail and has also considered the judgement of Allahabad Bench of Central Administrative Tribunal. The Tribunal has come to the conclusion in the impugned order herein that the applicants before the Central Administrative Tribunal, Allahabad Bench were duly qualified, whereas in the case of the Petitioner, he does not possess necessary qualification which is required for the purpose of holding such post on higher scale. The relevant portion of the said order reads as under:-

> "13. Further more, it has been stated that the Applicant or anybody who is a Demonstrator can get the benefits of the UGC scale only if he or she possesses the qualifications for the post of Demonstrators. There is a contest on this question in the sense that learned counsel for the Applicant pleaded on the one

hand that the applicant is fully qualified and on the other, that the qualification prescribed for Direct recruits are normally not the qualifications prescribed for promotees who are allowed to do with lesser qualifications. Now this is a point on which we cannot exercise our judgement as to what or what should not be the prescribed qualifications. The Applicant has not been able to prove that he possesses the qualification that are required and in the face of clear assertions made by the Respondents that the Applicant does not possess the qualifications prescribed, we are unable to order any relief as sought for."

8. We are in complete agreement with the view expressed by the Central Administrative Tribunal, Mumbai Bench in the case of the Petitioner. We find that the Petitioner does not possess necessary qualification for being equated with the other

demonstrators who are holding necessary qualification which is the condition prescribed for Higher Pay Scale of Rs.1740-3000/-. Since the Petitioner does not possess the said qualification, the Petitioner is not entitled for the said benefits of higher pay scale fixation. Accordingly, the present petition is required to be rejected. We accordingly, dismiss the present Petition. However, there shall be no order as to costs.

(A.P.Shah, J.)

14.9.2004. (S.U.Kamdar, J)